THE TRIAL OF A CRIMINAL DEFENDANT IN THE UNITED STATES

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There are basically two categories of crimes in the United States – misdemeanors and felonies. A felony is a serious crime for which the law has provided a possible penalty of at least a year in prison or the death penalty. The offense is a felony even though the defendant ultimately receives a sentence of less than a year in prison. A misdemeanor is a less serious crime for which the severest possible penalty the judge may impose under the law is less than a year in prison. This article will discuss how a felony trial is conducted in the United States. Misdemeanors are tried in a similar – but less formal – manner.

In discussing how a criminal felony trial is conducted in the United States, one must keep in mind that there are 51 separate sets of laws setting forth both trial procedures and substantive criminal laws. Each state and the federal government has its own set of laws which govern the particular jurisdiction. Thus, conceivably what may be a crime in one state may not be so in another. Also, the sentence for a crime in a particular state will likely differ from a neighboring state. And, of course, each state provides for its own procedural and evidentiary rules and regulations for the conduct of a criminal trial. Nevertheless, these factors notwithstanding, there are certain basic procedures applicable to all jurisdictions in the United States – and it is these common methods of trial in America that are discussed below.

A PRELIMINARY HEARING PROCEDURES

Under the American criminal justice system, the Court becomes involved in the case immediately upon the arrest of the defendant. A preliminary hearing is a relatively informal proceeding held promptly after arrest in which a judge first determines whether the defendant has an attorney. The Sixth Amendment to the Constitution of the United States provides that "in all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of Counsel for his defense." Where incarceration may be a consequence of the prosecution, the defendant is entitled to have an attorney appointed by the Court in the event he cannot afford one.

The judge next will determine at the preliminary hearing whether the accused is entitled to be released from custody on bail. If the accused subsequently appears at the trial proceedings, bail is refunded, but failure to appear results in forfeiture of bail. In most states, a defendant is

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allowed to deposit a portion of his bail (usually 10%), most of which deposit is refunded if the defendant honors his obligation to appear. Moreover, courts generally have the power to allow release without any deposit – merely accepting the defendant's signature on a bond that makes him liable for the amount of bail if he fails to appear.

Finally, at the preliminary hearing, the judge will determine whether there are reasonable grounds for believing the accused person committed the offense – that is, whether it is fair, under the circumstances, to require him to stand a regular trial. If after such a hearing the judge decides that the accusation is without probable cause, the accused will be discharged. This discharge, however, will not bar a grand jury indictment if subsequently developed evidence (or the same evidence presented at the preliminary hearing) satisfies the grand jury that the accusation is well founded. If the preliminary hearing judge decides that the accusation is a reasonable one, the accused will be "bound over" to the grand jury – that is, held in jail until the charge against him is presented to a grand jury for consideration.

B GRAND JURY PROCEDURES

A grand jury is usually composed of twenty-three citizen-voters, sixteen of whom constitute a quorum. The votes of twelve members are necessary to the return of an "indictment." After hearing the alleged facts related by the victim or other persons, the grand jury will return an indictment if it decides that there are reasonable grounds for proceeding to an actual trial of the person charged.

The Constitution of the United States does not require that state prosecutors use a grand jury to charge felony offenses, and there is an increasing tendency to enact statutes that permit the prosecution to charge felonies by filing an information – a sworn statement by the prosecutor setting forth the charges. Like the preliminary hearing, the consideration of a felony charge by a grand jury is in no sense of the word a trial. Only the state's evidence is presented and considered; the suspected offender is usually not even heard, nor is his lawyer present to offer evidence in his behalf.

C POST-GRAND JURY PROCEDURES

Following an indictment, the next step is the appearance of the accused person before the judge who will try the case. The indictment is read to the defendant or the essence of its contents is made known to him; in other words, he is advised of the criminal charges made against him. If he pleads guilty, the judge will order that the probation department, an administrative unit of the court, prepare a presentence investigation report of the defendant's background. The judge will also set a date for sentencing some time after the judge, the prosecutor and defense attorney have had an opportunity to examine the presentence investigation report. However, if

the accused pleads not guilty, a date is set for his actual trial.

After entering his plea of not guilty, the defendant may seek to terminate the prosecution's case, or at least seek to prepare a better defense, by utilizing a procedure known as making or filing a *motion.* A motion is merely a request for a court ruling or order that will afford the defendant the assistance or remedy he is thereby seeking. Some of the more frequently used motions are to dismiss the indictment and to suppress – keep out of the trial – a confession or other evidence sought by the police from the defendant.

D TRIAL PROCEDURES

A person accused of a felony is entitled to trial by jury as a matter of constitutional right. He may waive this right, however, and elect to be tried by a judge alone. In some jurisdictions the defendant has an absolute right to his waiver (e.g., Illinois); in others (e.g., the federal system) it is conditioned upon the concurrence of the judge and the prosecution.

If the case is tried without a jury, the judge hears the evidence and decides for himself whether the defendant is guilty or not guilty. Where the trial is by a jury, the jury determines the facts and the judge serves more or less as an umpire or referee; it is his function to determine what testimony or evidence is legally "admissible," that is, to decide what should be heard or considered by the jury. But in a trial by jury, the ultimate decision as to whether the defendant is guilty is one to be made by the jury alone.

In the selection of the jurors, usually twelve in number, who hear the defendant's case, most states permit his attorney as well as the prosecuting attorney to question a large number of citizens who have been chosen for jury service from the list of registered voters. In the federal system and a growing number of states, however, most trial judges will do practically all the questioning, with very little opportunity for questioning accorded the prosecutor and defense counsel. Nevertheless, each lawyer has a certain number of "peremptory challenges," which means that he can arbitrarily refuse to accept as jurors a certain number of those who appear as prospective jurors. In addition, if any prospective juror's answers to the questions of either attorney reveal a prejudice or bias that prevents him from being a fair and impartial juror, the judge, either on his own initiative or at the suggestion of either counsel, will dismiss that person from jury service. The avowed purpose of this practice of permitting lawyers to question prospective jurors is to obtain twelve jurors who will be fair to both sides of the case.

After the jury is selected, both the prosecuting attorney and the defense lawyer are entitled to make "opening statements" in which each outlines what he intends to prove. The purpose of this is to acquaint the jurors with each side of the case, so that it will be easier for them to follow the evidence as it is presented.

After the opening statements the prosecuting attorney produces the prosecution's testimony and evidence. He has the burden of proving the state's case "beyond a reasonable doubt." The prosecution has the obligation in most, if not all, cases to notify the defence of any evidence that would be of significance in exculpating the accused or in mitigating his sentence, if the prosecution is aware of this evidence. If at the close of the prosecution's case the judge is of the opinion that reasonable jurors could not conclude that the charge against the defendant has been proved, he will "direct a verdict" of acquittal. That ends the matter and the defendant goes free – forever immune from further prosecution for the crime, just as if a jury had heard all the evidence and found him not guilty.

If at the close of the prosecution's case the court does not direct the jury to find the defendant not guilty, the defendant may, if he wishes, present evidence in refutation. He himself may or may not testify, and if he chooses not to appear as a witness, the prosecuting attorney is not permitted to comment upon that fact to the jury. The basis for this principle whereby the defendant is not obligated to speak in his own behalf is the constitutional privilege that protects a person from self-incrimination.

The prosecution is given an opportunity to rebut the defendant's evidence, if any, and the presentation of testimony usually ends at that point. Then, once more, defense counsel will try to persuade the court to "direct a verdict" in favour of the defendant. If the court decides to let the case go to the jury, the prosecuting attorney and defense counsel make their closing arguments.

In their closing arguments the prosecutor and defense counsel review and analyze the evidence and attempt to persuade the jury to render a favourable verdict. The judge will then instruct the jury as to what law it should consider in weighing the evidence.

When the jurors have reached a decision, their participation in the case is then at an end. In the event the jurors are unable to agree on a verdit – and it must be unanimous in most states – the jury is discharged, and a new trial date may be set for a retrial of the case before another jury.

If the defendant is found guilty, it becomes the function of the trial judge to fix the sentence (set the penalty) within the legislatively prescribed limitations. The typical penalties include prison or jail term, partial confinement where the defendant may live in jail but be released during the day for work or school, fine, probation, restitution and combinations thereof.

E POST-TRIAL PROCEDURES

After a verdict of guilty, there are still certain opportunities provided the defendant to obtain his freedom. He may file a "motion for a new trial," in which he alleges certain "errors" committed in the course of his trial; if the trial judge agrees, the conviction is set aside and the defendant may be tried again by a new jury and usually before a different judge. Where this motion for a new trial is "overruled" or "denied," the

judge will then proceed to sentence the defendant. After he has been sentenced, the convicted defendant may appeal from both his conviction and sentence to a reviewing court or to a series of reviewing courts. In some instances this appeal may culminate in a review by the United States Supreme Court. If a defendant is without funds to either defend himself at trial or to appeal from his conviction, an attorney will be appointed by the court to represent him free of charge and the costs of trial and appeal will be paid by the government.

CONCLUSION

Some people in my country argue that with all these procedural safeguards and rights of the defendant, it is too difficult and slow to convict an accused. However, these criticisms are usually answered with the gentle reminder that our criminal justice system is premised on the notion that we are willing to tolerate a system that may permit 100 guilty persons to go free in order to assure that not one innocent person is wrongly convicted.